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C O N F I D E N T I A L SECTION 01 OF 02 BAMAKO 000509

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [ML](#)
SUBJECT: ARBITRARY DETENTION: ATT ORDERS ACQUITTED MAN TO
STAY IN PRISON

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Classified By: Political Officer Peter Newman, Embassy Bamako,
for reasons 1.4 (b) and (d).

¶1. (C) Summary: On May 27, the Supreme Court of Mali reversed the conviction for embezzlement of Mamadou Baba Diawara, the former CEO of one of Mali's largest banks, and ordered that he and an accomplice be released from prison. The Minister of Justice, on orders from President Amadou Toumani Toure (ATT), intervened and instructed that under no circumstances was the Supreme Court's order to be enforced. The Minister of Justice filed a legally questionable appeal of the Supreme Court's decision, replaced the Public Prosecutors at the Supreme Court, and ordered the arrest of the prison warden who released Diawara's accomplice pursuant to the Supreme Court order. Diawara remains in prison and in legal limbo. Although ATT's intervention may have been a well-intentioned swipe against corruption, the means he used do not set a good example for judicial independence. End Summary.

Bad Business Deal or Bad Court Decision?

¶2. (SBU) In 2007, in one of the rare prosecutions and convictions for corruption in Mali, Mamadou Baba Diawara, the CEO of Mali's Habitat Bank (BHM), and Ismaila Haidara, the CEO of the West African Investment Company (WAIC), were sentenced to life imprisonment and 15 years imprisonment, respectively. The trial court in Segou found Diawara and Haidara had colluded to defraud the BHM of 7 billion FCFA (14 million USD) through a sham real estate loan that was never intended to be repaid.

¶3. (SBU) On May 27, 2009, the Supreme Court of Mali's Criminal Division reversed the convictions. The Supreme Court found there was no evidence that Diawara and Haidara intended the real estate deal to fail and determined there was no evidence proving the undersecured loan was fraudulent as opposed to merely bad business judgment. The Supreme Court decision did not return the case to the lower courts for retrial, but decided on the merits in favor of the accused. Once the decision was handed down, the Chief Public Prosecutor at the Supreme Court, Cheickna Detteba Kamissoko, issued a routine order commanding the immediate release of Mamadou Baba Diawara and Ismaila Haidara.

¶4. (SBU) A review of the ample press coverage devoted to the Diawara scandal reveals some indications that the Supreme Court's decision was in less-than-good faith, which would not be surprising given the wealth of the defendants and the judiciary's legendary corruption. For unexplained reasons, the Public Prosecutor failed to keep the Minister of Justice informed of developments on the case, as was his normal practice. The case was added to the May 27 docket at the very last minute and while ATT was in Europe, catching many of the relevant players off guard. The order to release

Diawara and Haidara was seemingly signed in great haste, and by a different prosecutor than the one upon whom the task would usually fall. Finally, there have been persistent rumors - unconfirmed but deemed plausible by two Embassy sources - that key magistrates at the Supreme Court, including the justices, accepted a bribe totalling 200 million FCFA (400,000 USD).

Haidara Released; Minister of Justice Intervenes

15. (SBU) Upon hearing of the Court's decision, the Minister of Justice, Maharafa Traore, immediately intervened and ordered that under no circumstances was the Supreme Court's decision to be enforced. Although this message did not reach the prison in Segou before Diawara's accomplice Haidara had been released, Diawara was kept locked up. Traore also contacted Kamissoko at the Supreme Court, and ordered him to file an immediate appeal of the decision. Unfortunately, there is no "appeal" available to the government of a Supreme Court decision under Malian law. The government has cited Articles 547-549 of the Code of Criminal Procedure to justify their appeal, but those sections apply only to convicted persons who argue that new evidence proving their innocence has surfaced after their trial.

16. (C) Malian jurists have almost universally declared the government's attempt to appeal the decision baseless. Hameye Foune Mahalmadane, the Secretary General of the SYLIMA magistrate's labor union, called the continued detention of Diawara "a grave violation of human rights." Adama Diarra Sidibe, author of Law and the Practice of Law in Mali, told the Embassy that Diawara's detention is utterly arbitrary and extrajudicial. Both men emphasized that if the Supreme Court

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Justices accepted a bribe, the government's sole recourse is against the Justices for corruption. There is no provision in Malian law for ignoring or appealing a Supreme Court decision simply because it is suspected of being the wrong decision or obtained through fraud.

Accomplices or Scapegoats?

17. (SBU) On June 3, 2009, the President's Council of Ministers fired Chief Prosecutor Kamissoko and the Supreme Court's General Counsel, Moussa Keita. Both were replaced by men hand-selected by the Minister of Justice. On July 16, Lieutenant Sekouba Doumbia, the warden of the prison in Segou who released Ismaila Haidara before the Minister of Justice reached him by phone, was placed under arrest for aiding and abetting in the escape of a convict. Doumbia's arrest came shortly after he had defended himself in the press, claiming he had done nothing except obey a valid release order signed by the Supreme Court Chief Public Prosecutor.

Enter Politics

18. (C) ATT's interest in the case could be political. Diawara, a long-time critic of the President, is suspected of authoring "ATT-cratie: The Promotion of a Man and his Clan," a scathing critique of ATT published anonymously during the presidential elections in 2007. In a press conference on June 8, ATT defended the Minister of Justice's intervention in the case on the grounds that he had not been kept properly informed about the development of the case. ATT argued this was a procedural irregularity and that he, elected by the people of Mali, had a responsibility to maintain a vigilant watch on the actions of the judiciary.

19. (C) Meanwhile, Yaya Sangare, a National Assembly deputy

from the majority ADEMA party and a former participant in the Embassy's International Visitor's Program, used the National Assembly's powers of oversight of government to call Maharafa Traore to the National Assembly to explain the steps he had taken. Sangare's questions, presented to Traore and his fellow deputies, focused on separation of powers and the increasing interference by the executive in the affairs of the judiciary. However, on July 2, the day that Traore appeared in the National Assembly building, Sangare "suspended" his request for questioning. In a meeting with the Embassy on July 21, Sangare confirmed that he withdrew his questions because he had been placed under tremendous pressure not to embarrass the government in such a "sensitive" case.

Comment: One Step Forward, Three Steps Back

¶10. (C) There is no good solution to the current situation. It is highly probable that Diawara and Haidara embezzled 14 million dollars from BHM. It is equally probable that the Supreme Court accepted favors of some kind in exchange for acquitting Diawara and Haidara. ATT may be acting for personal reasons, or he may be fed up with corruption and the apparent impunity in which it takes place. Regardless of his motives, ATT must tread carefully, for he finds himself in the untenable position whereby Diawara is imprisoned on his order alone. While ATT cannot be blamed for not wanting to let a guilty man go free, the ramifications of arbitrary detention go beyond this one case.

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